

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

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DIRECT DIAL
(202) 371-7007
EMAIL ADDRESS
KEN.GROSS@SKADDEN.COM

October 11, 2016

Mark Shonkwiler
Assistant General Counsel, Enforcement
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MURs 7031 and 7034 – Saul A. Fox and Benjerome Trust

Dear Mr. Shonkwiler:

We are writing on behalf of Saul A. Fox and Benjerome Trust ("Trust") in response to your letters dated September 1, 2016, relating to the two complaints ("Complaints") filed in the above matters under review ("MURs"). You wrote that although the Complaints do not mention Mr. Fox or the Trust, the Federal Election Commission ("FEC" or "Commission") has information indicating that they may have violated the Federal Election Campaign Act of 1971, as amended ("FECA"), by:

- 1) Failing to provide information to Pursuing America's Greatness and Stand for Truth, Inc., two FEC-registered independent expenditure-only committees, regarding the proper attribution of contributions under 11 C.F.R. § 110.1(g)(5); and
- 2) Making excessive contributions to the Republican National Committee ("RNC") in violation of section 30116(a)(1)(B) of FECA.

I. FACTUAL BACKGROUND

The Trust is an *inter vivos* trust, and Mr. Fox is the sole trustee and beneficiary. As more fully described in Children of Israel, LLC's ("Children's") and Shaofen Gao's responses to the Complaints, Children is a manager-managed LLC, of which Ms. Gao is the manager and the Trust is the member. Under the terms of the LLC agreement ("Agreement"), the purpose of

the LLC is to engage in any activities that are lawful under its creating statute.¹ The LLC agreement provides that the manager has the power to do any acts necessary in furtherance of such purpose, and controls the management and operation of the Company in her sole and absolute discretion.

Children has made both charitable and permissible political contributions. These include, among others, charitable contributions to American Friends of Shavei Yisrael, Inc. and Stanford University, both of them § 501(c)(3) public charities, and permissible political contributions to Pursuing America's Greatness and Stand for Truth, Inc. (the "IE-Only Committees"), and to the RNC. Specifically regarding the RNC, Children contributed a total of \$334,000 to it on December 10, 2015.² On its report disclosing the contributions, the RNC noted that Children was the donor and that the contributions were attributable to Mr. Fox.

On March 15, 2016, the Trust contributed a total of \$334,000 to the RNC. Please also note that on June 7, 2016, Mr. Fox made a contribution to Trump Victory, the Trump campaign's joint fundraising committee, a portion of which Trump Victory mistakenly allocated to the RNC. However, the RNC subsequently corrected this and allocated the June 7 contribution solely to the state party committees for which Trump Victory raises funds.

II. LEGAL ANALYSIS

A. Neither Mr. Fox, the Trust nor Children have a duty under FECA to provide attribution information to the IE-Only Committees regarding Children's contributions

FEC regulations require that certain LLCs must, at the time they make a contribution, provide information to the recipient committee as to how the contribution is to be attributed. 11 C.F.R. § 110.1(g)(5). This section imposes a duty on an LLC but not on its members.

More significantly, however, this regulation applies to an LLC's contributions to candidates, political party committees, and "other political committees" to which contributions by any person are limited to \$5,000 per year.³ As a result, this section does not apply to contributions by Children to the IE-Only Committees, because LLCs may make unlimited

¹ The creating statute is the California Revised Uniform Limited Liability Company Act, California Corporations Code § 17701.01 *et seq.* Under this statute, an LLC is distinct from its members and may be formed for any lawful purpose except for the banking or trust company business, or the business of issuing policies of insurance and assuming insurance risks. Ca. Corporations Code § 17701.4.

² Children has not made any political contributions since March 18, 2016.

³ 11 C.F.R. § 110.1(d).

contributions to such entities.⁴ While 11 C.F.R. § 110.1 does include a paragraph at its very end stating that it applies to contributions to political committees making independent expenditures, this paragraph only goes to proper attribution for limits purposes, and thus is invalidated by case law.⁵ Indeed, Part 110 of the FEC regulations only covers contribution and expenditure limitations and prohibitions, while Part 104 covers reporting and disclosure obligations.

It is unfair and without legal foundation to require Mr. Fox and the Trust to provide attribution information to the IE-Only Committees when FECA and the FEC regulations do not impose such a duty. It is equally unfair and without legal foundation to expect Children to provide donor attribution information to the IE-Only Committees when FECA and the FEC regulations do not require it. Moreover, the IE-Only Committees never requested this information from Mr. Fox, the Trust or Children. If the FEC wants LLCs contributing to independent expenditure-only committees to be subject to attribution rules in 11 C.F.R. § 110.1(g) for disclosure purposes, it should amend the FEC regulations.

In addition, at the time Children made contributions to the IE-Only Committees, Mr. Fox, the Trust and Children did not have notice of the FEC's evolving position on LLC contributions. Even if the Statement of Reasons ("Statement") released by three Commissioners after a deadlocked vote on whether to proceed with an enforcement action⁶ constitutes such notice, it was issued *after* all of Children's political contributions. It is worth noting that in the Statement, the Commissioners explained that pursuing enforcement against the respondents for alleged violations of the name-of-another prohibition by the use of LLCs would have been "...manifestly unfair because Commission precedent does not provide adequate notice regarding the application of section 30122 to closely held corporations and corporate LLCs or the proper standards for its application." Statement, page 8. The same principle is even more applicable here, where the FEC would read into 11 C.F.R. § 110.1(g)(5) a disclosure obligation that does not exist.

B. Mr. Fox, the Trust and Children have not contributed to the RNC in excess of FECA limits

⁴ *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010). Prior to these cases, corporations could not make contributions to independent expenditure-only committees, and contributions to such committees were subject to the \$5,000 per year limit from permissible donors.

⁵ 11 C.F.R. § 110.1(n); *SpeechNow.org v. FEC*, *supra*.

⁶ Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman explaining their vote not to pursue enforcement in MURs 6485, 6487 and 6488, 6711, and 6930, W Spann LLC, et al. (April 1, 2016).

FECA provides that a person may not make contributions in any calendar year to a national political party committee, including the RNC, in excess of certain limits.⁷ In 2015 and 2016, the limit is \$334,000 per calendar year to a national party committee.⁸

Neither Mr. Fox nor the Trust (nor Children) have given excess contributions to the RNC in 2015 or 2016. Rather, even aggregating Mr. Fox's, the Trust's and Children's contributions to the RNC, the RNC has not received more than \$334,000 per calendar year:

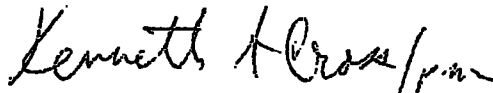
- On December 10, 2015, Children contributed a total of \$334,000 to the RNC. The RNC properly reported that Children made the contributions and, in the memo lines, noted that the contributions were solely attributable to Mr. Fox. The Trust did not contribute to the RNC in 2015, nor did Mr. Fox individually contribute to the RNC in 2015.
- On March 15, 2016, the Trust contributed a total of \$334,000 to the RNC. Children has not contributed to the RNC in 2016. Other than the June 7, 2016 contribution to Trump Victory that Trump Victory incorrectly allocated to the RNC and that the RNC subsequently correctly allocated to the state party committees, Mr. Fox has not contributed to the RNC in 2016.

III. CONCLUSION

For the reasons set forth above, we respectfully request that the Commission find no reason to believe that Mr. Fox, the Trust, Children or Ms. Gao violated FECA.

Please do not hesitate to contact us with any questions or requests for additional information.

Sincerely,



Kenneth A. Gross



Patricia M. Zweibel

Attorneys for Saul A. Fox and Benjerome Trust

⁷ 52 U.S.C. § 30116(a)(1)(B).

⁸ See FEC, Contribution Limits for 2015-2016 Federal Elections, at <http://www.fec.gov/info/contriblimitschart1516.pdf>